

REMARKS

The specification has been amended to specifically conform the specification to the claims as originally filed. This material was previously covered by the various exhibits.

Claims 1-14 and 16-27 are pending in this application.

Claim 15 has been withdrawn without prejudice, thus obviating the rejection under 35 U.S.C. § 101.

Claims 3-14 have been amended to further define the invention and to limit the claims to a "combination." New claims 16-27 have been added defining the "method" previously recited in claims 3-14.

Claim Rejections Under 35 U.S.C. § 112

Reconsideration of this rejection of claims 9 – 14, under 35 U.S.C. § 112, first paragraph, and claims 3-14 (claim 15 is now withdrawn), under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Anyone skilled in the art should be able to readily compute the metrics and practice the invention using the algorithms provided. The formulas are simple, straightforward mathematical expressions, readily understood and used by anyone with even a modest level of mathematical expertise, well below one of ordinary skills in the art. Between the specification, claims, and the included exhibits, it should be apparent that all the enabling information to practice the invention has been clearly provided.

Claims 3-14 have been amended to recite only the "combination" and new claims 16-27 have been added limited solely to a "method" thereby obviating the point raised by the Examiner regarding recitation of a "combination/method."

Similarly, claims 3-14 and 16-27 now have clear antecedent basis for the term "a metric for"

Claim Rejections Under 35 U.S.C. § 102

The rejection of claims 1 – 4 and 6-8, under 35 U.S.C. § 102, as being anticipated by Townsend, is respectfully traversed.

With regard to the attempted comparisons between the present invention and Townsend, the basic difference in the products apparently is not recognized. In an enterprise, performance depends on the alignment of organizational processes, business processes, and systems. Townsend focuses only on the electronic and computer elements of the last two, to provide an adaptive countermeasure selection system. Townsend only addresses the formally defined workflow and business processes. However, EnCompass Knowledge Systems, Inc. ("EnCompass") has recognized that the effectiveness of organizations is ultimately determined by the non-formal, human networks associated with information transfer, decision making, and task execution. Until EnCompass, this factor eluded effective analysis, synthesis and management. EnCompass was specifically developed from the outset to analyze, synthesize, and manage the organizational, i.e., human to human, networks, all of the modalities of interaction, not just the formal systems, and to clearly identify and assess pathologies in organizational processes, and misalignment and/or disconnects between these non-formal processes and the formal business processes and systems, as opposed to just the "purely" formal processes and systems, per se, without the benefit of human interaction, etc.

The formulas are all fairly straightforward mathematical expressions that should not be an issue with even a modicum of mathematical education. The more fundamental issue appears to be the failure of the examiner to grasp that the metrics as defined here are measures of an "organizational" effectiveness vs. system or business performance. **These measures taken in concert flag potential problems before they become symptomatic and measurable by just pure business/system metrics.** They also provide a scoreboard of organizational performance that can monitor changes **predictively**, before the effect of the changes on an enterprise may become evident and measurable, if at all, by any business/system metrics of the prior art. These are very fundamental differences from the referenced prior art in a way that has not been understood by the Examiner. In other words, the present invention provides a so-called "crystal ball" for viewing the future and fending off disasters, whereas the prior art only sees the extent of

disasters after they have actually occurred. **The invention is predictive while the prior art is essentially blind to the future and can only look backward.**

Only the present Applicants disclose that interactions between individuals in the organization are defined based on their reported perceptions of the significance of their interaction with others on a particular organizational issue. (See the application and co-pending Application No. 10/959,640 which discuss capturing the perceptions of users in the organization and to how decisions and knowledge sharing networks can be configured).

The grounds of rejection for claims 1 and 2 in paragraph 9. of the Office Action are believed to be in error and now clearly moot in view of the further clarifying amendments to the language of the claims more clearly defining the distinguishing features of Applicants' invention and obviating the prior art.

With regard to the rejection of claims 3, 4 and 6-8, covered by paragraphs 10-14 of the Office Action, the Examiner appears to have drawn Applicants' own recited terms from thin air, by hindsight, since a review by those skilled in the art of the references to portions of Townsend selected and cited by the Examiner appear to have little or no relevance to what is actually claimed.

Accordingly, the rejection under 35 U.S.C. § 102 should be reconsidered and withdrawn.

Claim Rejections Under 35 U.S.C. § 103(a)

Reconsideration is also requested for claims 9-10 and 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Townsend alone, and claims 5-11 as being unpatentable over Townsend in view of Hambrick et al.

The previous discussions of Townsend under 35 U.S.C. § 102 are equally applicable here regarding Townsend's inadequacy to teach the key features of Applicants' invention.

Furthermore, Hambrick et al. is at least equally deficient, and neither Townsend nor Hambrick et al., individually or in combination, expressly disclose that interactions between individuals in the organization are defined based on their reported perceptions of the significance of their interactions with other individuals on a particular organizational issue.

Kourim et al., cited but not specifically applied against any of Applicants' claims, is only tangentially related, if at all. Kourim et al. focuses only on system performance and optimization, whereas the present invention relates to measures of organizational performance and effectiveness as previously discussed in connection with the primary references.

Cheng, cited but not applied, only addresses system modeling and database structure. As is the case with Townsend, neither even purports to provide measures of organizational performance and effectiveness, or to analyze the aggregation of individual perception data.

Hambrick et al. is of little relevance, as it relates to mechanisms for business process optimization and control, vs. the present invention that is focused on producing metrics of organizational performance and effectiveness based on captured perceptions of issue based interactions between individuals.

Maclean et al., cited but not applied, are at best tangentially related, in that it is focused on mechanisms for computing and reporting enterprise level performance in terms of value creation. It does not even purport to provide multi-dimensional metrics of organizational performance which is accomplished only by the present invention.

Hypothetically, and merely to expedite further prosecution of this application towards allowance, and further in light of parallel prosecution in Applicants' co-pending Application No. 10/959,640, both Townsend and EnCompass Knowledge Systems, Inc. ("The Notes") disclose tools utilized to manage a business and certain relationships in that business. Townsend specifically discloses defining the current status of complex system relationships, but only EnCompass Knowledge Systems, Inc. discloses defining these relationships based on individuals' perceptions of the organization and organizational issues. It certainly would not have been obvious to one of ordinary skill in the art at the time of the invention to define the critical organizational relationships based on perceptions of the actual individuals involved in those relationships in order to more accurately predict and create a common vision for the future.

The EnCompass Knowledge Systems, Inc. "Notes" article attached to the concurrently filed Supplemental Information Disclosure Statement discloses that the input data is regarding individuals' perception of the significance of their interaction with others on a particular issue.

(See page 1 of Notes, which further discusses capturing the perceptions of users in the organization as to how decisions and knowledge sharing networks can be configured). This article is included (though it is not actually prior art), merely to expedite prosecution of this case.

Any attempt that might be made, again *arguendo*, to combine the Townsend and EnCompass Knowledge Systems, Inc. references in an effort to build a viable combination to support a rejection of any of Applicants' claims 1-14 and 16-27 would be totally improper and illogical.

The EnCompass Knowledge Systems, Inc. Notes ("the Notes") which were cited in the Office Action dated October 19, 2007 in co-pending Application No. 10/949,640 are not a valid prior art reference against the present invention, since the Notes were first posted on the public website in 2004 (Declaration of Michael M. Mann, attached to Supplemental Information Disclosure Statement concurrently filed herewith and previously in Applicants' co-pending application). The priority date for this application is October 8, 2002, long prior to such first public posting of the Notes. The 2000 Copyright Notice on the Notes was the year of the revision thereof, not the date of their first public posting.

With the EnCompass Knowledge Systems, Inc. reference removed (note – see enclosed Declaration of inventor, Michael M. Mann), the only arguments in support of non-patentability must now be supported entirely by Townsend alone or in combination with Hambrick et al. which must be conceded as not teaching key features of the invention which are only taught by EnCompass Knowledge Systems, Inc. (the Notes), the author of which is the present inventor and Applicant.

Clearly, therefore, in proclaiming the absolute criticality of the EnCompass Knowledge Systems, Inc. reference in negating patentability of Applicants' claims and, therefore, failure of this reference as an item of prior art, should totally obviate such an approach; and, indeed, this is actually the case, both in Applicants' earlier referenced co-pending application and, *arguendo*, would be so in this present application if such a combination were attempted.

None of the references seem to deal at all with multi-dimensional metrics of organizational performance, let alone any of the other broad concepts mentioned above. The Examiner

appears to be grasping at "look alikes" in terminology relating to non-analogous machine, system, business process performance and optimization, as opposed to your desired objective of organizational performance and effectiveness, based upon individual's perceptions as stated above.

CONCLUSION

It is submitted that, in view of the above discussion, there is no teaching or suggestion of Applicants' invention as claimed herein, within the scope of the disclosures of any of the cited references, taken individually or in any combination, without extensive modification and the exercise of inventive skill.

In view of the foregoing, it is believed that this case should now clearly be in condition for allowance, and an early Notice of Allowance to this effect is earnestly solicited. If the Examiner wishes to discuss this matter further, please contact Applicants' attorney at 310/824-5555, Ext. 560.

Please charge any further fees payable in connection with this submission to our Deposit Account No. 06-2425.

Respectfully submitted,

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